

REMARKS

This is responsive to the Office Action mailed on April 28, 2003. In that Office Action, the Examiner rejected claims 13-19 and 26-30. The application continues to contain claims 13-19 and 26-30.

In the Office Action, the Examiner rejected claims 13-16, 18, 26-30 under 35 U.S.C. § 103(a) in Paragraph 3 of the Office Action as being unpatentable over Glatt et al. U.S. Patent No. 4,858,552 in view of Reynolds U.S. Patent No. 3,354,863 and further in view of Luy et al. U.S. Patent No. 5,631,102 for reasons provided in the Office Action mailed on June 16, 2002 (Paper No. 8). This rejection is not fully understood by applicant's attorney since the Examiner says that Glatt et al. in view of Reynolds in view Luy et al. fail to teach an inlet air temperature, a product temperature, a spray liquid temperature, a spray nozzle temperature, an atomizing air temperature, a spray liquid line temperature, a coating zone temperature, a fluidizing gas flow, and atomizing gas pressure in a process. This element is in independent claims 13 and 26.

Further in the Office Action (page 2), the Examiner utilizes the Cody et al. patent by adding the Cody et al. patent to the combination of the Glatt et al., Reynolds and Luy et al. patents. It is believed that the Examiner intended to include the Cody et al. patent in the initial rejection (paragraph 3) of at least claims 13 and 26, since these independent claims recite the specific positions at which temperatures are taken, gas flow and atomizing gas pressure.

The Examiner in utilizing the disclosure in Cody et al. stated that "Cody et al. teaches that pressure, temperature and net volume or mass flow are the normal way of monitoring the state of fluidization within a fluidized bed or while a unit is operating (see column 2, lines 27-30). Taking this statement from Cody et al. the Examiner further said "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have monitored an inlet air temperature, a product temperature, a spray liquid temperature, a spray nozzle temperature, an atomizing air temperature, a spray liquid line temperature, a coating zone temperature, a fluidizing gas flow, and atomizing gas pressure in a process of Glatt et al. in view of Reynolds in view of Luy et al. for coating particles with the expectation of providing the

desired normal coating operation since Cody et al. teaches that pressure, temperature and net volume or mass flow are normal ways of monitoring the state of fluidization within a fluidized bed or while a unit is operating.”

It is not understood how the Examiner can make the leap from a statement in Cody et al. that “while pressure, temperature and net volume or mass flow are the normal way of monitoring the state of fluidization within a fluidized bed . . .” (column 2, lines 27-29) to the specific temperature locations, gas flow and atomizing gas pressure that is recited in the claims of the present application. There is no suggestion that temperatures at these specific locations are taught or suggested by this statement in Cody et al. nor any of the references that the Examiner has cited.

As stated in the MPEP § 2143, to establish a prima facia case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations.

At the very least, the prior art references when combined do not teach all the claim limitations. The fact that Cody et al. states that pressure, temperature and net volume or mass flow are monitored in a fluidized bed dryer, does not teach or suggest the specific temperature locations, gas flow and gas pressure that is recited in the claims in the present application.

The Examiner simply makes the statement that it would have been obvious to one of ordinary skill in the art to have monitored all the specific temperatures that applicant has recited. Cody et al. teaches the “normal” way of monitoring fluid bed dryer conditions. It does not teach or suggest the specific temperature locations recited in the claims.

One reason for monitoring temperatures at the specific locations recited in the claims is due to applicant’s specific structure of a fluidized bed dryer for which the Examiner had to combine three references (Glatt et al. in view of Reynolds in view of Luy et al.) to even come

up with an alleged construction of applicant's fluid bed dryer. There is no basis to then state that "Cody et al. nor any of the other three references teaches to monitor:

- An inlet air temperature
- A product temperature
- A spray liquid temperature
- A spray nozzle temperature
- An atomizing air temperature
- A spray liquid line temperature
- A coating zone temperature
- A fluidizing gas flow
- Atomizing gas pressure"

As the MPEP states in § 2143.03 to establish prima facia obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. As the Examiner has impliedly admitted, Cody et al. does not teach or suggest the specific temperatures listed above. Cody et al. simply makes a statement that pressure, temperature and net volume are normally monitored in a fluidized bed dryer. This is not something that applicant disagrees with. However, applicant is not claiming such a broad set of elements. Applicant is claiming specific temperature locations, along with gas flow and an atomizing gas pressure in view of applicant's fluid bed dryer bed construction. Nothing in Cody et al. or the other references teaches or suggests this.

There is no teaching or suggestion in Cody et al. to monitor the above list of temperature locations, gas flow and gas pressure since the applicant's dryer construction is not disclosed in Cody et al. Similarly, applicant's dryer construction is not disclosed in Glatt et al. Likewise, applicant's dryer construction is not disclosed in Reynolds nor Luy et al. Therefore, there is no teaching or suggestion or motivation in any of the references to monitor temperatures at the locations recited in the present claims. Monitoring temperatures at the location specified in the claims is not the "normal way" of monitoring fluidized bed dryer conditions.

When there is no specific reference that discloses what applicant is claiming, the Examiner may rely on common knowledge in the art or something that is well known. However, this is not the basis of the Examiner's rejection. The Examiner only states that this would be just "the normal way of monitoring".

As the MPEP states in § 2144.03A. Official notice without documentary evidence to support an Examiner's conclusion is permissible only in some circumstances.

As further stated, in § 2144.03B and C, if the Examiner's alleged finding is adequately traversed, the Examiner must provide documentary evidence in the next Office Action to maintain the rejection. Applicant has specifically pointed out that Cody et al. does not teach or suggest monitoring the following combination.

- An inlet air temperature
- A product temperature
- A spray liquid temperature
- A spray nozzle temperature
- An atomizing air temperature
- A spray liquid line temperature
- A coating zone temperature
- A fluidizing gas flow
- Atomizing gas pressure

The statement by Cody et al. that "pressure, temperature and net volume or mass flow are normal ways of monitoring the state of fluidization within a fluidized bed" is not an anticipation nor does it make obvious the above list of temperature locations, gas flow and gas pressure which is premised in part on a specific construction of applicant's fluid bed dryer for which the Examiner had to combine three references in order to come up with the alleged same or similar construction.

As stated further in the MPEP in § 2144.03E:

"Any rejection based on assertions that a fact is well known or is common knowledge in the art without documentary evidence to support the Examiner's conclusion should be

judicially applied. Furthermore, as noted by the court in *Ahlert*, any facts so noted should be of notorious character and serve only to "fill in the gaps" in an insubstantial matter which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based."

The Examiner is relying on Cody et al. as the principal evidence to support the rejection of independent claims 13 and 26. As stated in the MPEP, this is improper.

It is believed that independent claims 13 and 26 are in allowable form, along with their respective dependent claims. Reconsideration and allowance of all of the claims is respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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